

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 MICHAEL CASSIDY and PACIFIC
5 COMMUNITY RESOURCE CENTER,
6 *Petitioner,*
7

8 vs.
9

10 CITY OF GLENDALE,
11 *Respondent,*
12

13 LUBA No. 2012-033
14

15 FINAL OPINION
16 AND ORDER
17

18 Appeal from City of Glendale.
19

20 Helen L. Eastwood, Bend filed the petition for review and argued on behalf of the
21 petitioner.
22

23 Steven Mountainspring, filed the response brief and argued on behalf of respondent.
24 With him on the brief was Dole, Coaldwell, Clark, Mountainspring & Mornarch, PC.
25

26 HOLSTUN, Board Member; BASSHAM, Board Chair; RYAN, Board Member,
27 participated in the decision.
28

29 AFFIRMED

10/10/2012
30

31 You are entitled to judicial review of this Order. Judicial review is governed by the
32 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a city legislative land use decision that amends the City of Glendale Zoning and Land Development Ordinance (ZLDO).

FACTS

The subject of this appeal is Ordinance 03-2012. Before Ordinance 03-2012 was adopted, the city’s Commercial (C) zone listed “Multi-family housing” as a permitted use. ZLDO 2.3.20(I). We have included as Appendix A, a copy of page 22 of the official ZLDO that is maintained by the city. On that copy, city staff have stricken through ZLDO 2.3.20(I) and added a notation to indicate that Ordinance 03-2012 eliminated Multi-family housing as a permitted use. Whether that is a correct interpretation of Ordinance 03-2012 is a central issue in this appeal.

The application that led to Ordinance 03-2012 is included in the record at Record 59-75. The “Application for Zoning Amendment” form that begins at Record 59 states in part

“10. For Proposed Zoning Ordinance Text Amendments (if applicable), provide the exact text of the existing language which you want the City to remove or replace, along with the appropriate references for locating that text in the [ZLDO]. Then provide the exact language which you are proposing as a substitute for the removed text. * * *.”
Record 60 (underscoring in original).

Next to that application requirement, the city (the applicant in this matter) wrote “See attached staff report by Shoji Planning, LLC.” *Id.*

The referenced March 12, 2012 staff report appears at Record 67-73. We have set out in Appendix B the relevant part of the staff report that addresses the third amendment adopted by Ordinance 03-2012, which is the amendment that is disputed in this appeal. As is quite clear in the staff report, the applicant requested that the city council eliminate ZLDO 2.3.20(I), which lists Multi-family housing as a permitted use in the C zone. As a result of that deletion, the staff report also proposed renumbering (re-lettering) ZLDO 2.3.20(J)

1 through 2.3.20(W) so that they would become ZLDO 2.3.20(I) through 2.3.20(V), as each
2 use effectively moved up one letter to replace the space vacated by the elimination of former
3 ZLDO 2.3.20(I). But the only substantive amendment proposed under amendment 3 was to
4 eliminate Multi-family housing as a permitted use in the city’s C zone.

5 The relevant text of Ordinance 03-2012 is set forth at Appendix C of this opinion. As
6 the title of Ordinance 03-2012 explains, the purpose of the third amendment adopted by
7 Ordinance 03-2012 is to “REMOVE MULTI-FAMILY HOUSING FROM THE
8 PERMITTED USES IN COMMERCIAL ‘C’ ZONE.” Appendix C. However the text of the
9 ordinance that appears after the ordaining clause simply lists the permitted uses as they
10 appeared before Ordinance 03-2012 at ZLDO 2.3.20(J) through (W), but re-letters those uses
11 as requested in the March 12, 2012 staff report. As the city concedes, Ordinance 03-2012 is
12 an example of unclear ordinance drafting because it does not clearly express how Ordinance
13 03-2012 amends the ZLDO. If one were unfamiliar with the application that led to adoption
14 of Ordinance 03-2012, and looked only at the part of the ordinance following the ordaining
15 clause, it would be difficult or impossible to know that Ordinance 03-2012 was adopted to
16 eliminate multi-family housing as a permitted use in the C zone. Only the title presents a
17 clear statement that one of the purposes of Ordinance 03-2012 is to eliminate multi-family
18 housing as a permitted use in the C zone.

19 The issue presented in the first and fourth assignments of error is whether the city’s
20 unclear ordinance drafting warrants remand so that the city can revise Ordinance 03-2012 to
21 more clearly state the city’s intent in enacting Ordinance 03-2012. In their second and third
22 assignments of error, petitioners argue that even if Ordinance 03-2012 is legally sufficient to
23 eliminate multi-family housing as a permitted use in the C zone, that amendment violates the
24 Glendale Comprehensive Plan and a ZLDO standard that governs ZLDO amendments.

1 **FIRST AND FOURTH ASSIGNMENTS OF ERROR**

2 Citing *Lane County v. Heintz Const. Co.*, 228 Or 152, 364 P2d 627 (1961) (*Heintz*),
3 petitioners argue the third amendment adopted by Ordinance 03-2012 is so unclear and “so
4 flawed as to require remand or reversal.” Petition for Review 9. We discuss *Heintz* below.

5 **A. Text and Context**

6 The city responds that although the city council that enacted Ordinance 03-2012 did
7 not expressly state that the amendments that follow the ordaining clause should be “pasted
8 over” the ZLDO language that was being amended, that was its intent. Looking first at the
9 text of Ordinance 03-2012, we examine below how that view of Ordinance 03-2012 would
10 operate for each of the two amendments that are not in dispute, as well as the third
11 amendment that is the subject of this appeal.

12 ZLDO 8.0.100 is entitled “Notice Procedures for Legislative Hearings.” Although
13 we do not set out the text of ZLDO 8.0.100 in its entirety in this opinion, it includes 19
14 subsections, ZLDO 8.0.100(A) through ZLDO 8.0.100(S). Under the city’s reading of
15 Ordinance 03-2012, the first amendment added text to and deleted text from only a single
16 subsection, ZLDO 8.0.100(A). Since ZLDO 8.0.100(A) was modified rather than eliminated,
17 ZLDO 8.0.100(B) through (S) did not need to be re-lettered. Since the first amendment
18 adopted by Ordinance 03-2012 did not modify ZLDO 8.0.100(B) through (S), we understand
19 the city to argue the first Ordinance 03-2012 amendment should be understood simply to
20 ordain that the new ZLDO 8.0.100(A) text be “pasted over” the existing text of ZLDO
21 8.0.100(A) and was complete with that paste over.

22 Turning to the second Ordinance 03-2012 amendment, ZLDO 8.0.70 is entitled
23 “Notice Procedures for Quasi-Judicial Hearings,” and includes four subsections with a
24 number of subdivisions within those four subsections. ZLDO 8.0.70(A) through (D). ZLDO
25 8.0.70 also includes a short paragraph that precedes ZLDO 8.0.70(A). Under the city’s
26 reading of Ordinance 03-2012, the second amendment deleted three words from the short

1 paragraph that precedes ZLDO 8.0.70(A). No other changes were made to ZLDO 8.0.70 and
2 no re-lettering of ZLDO 8.0.70(A) through (D) was required. Since the second amendment
3 adopted by Ordinance 03-2012 did not modify ZLDO 8.0.70(A) through (D) substantively,
4 we understand the city to argue the second Ordinance 03-2012 amendment should be
5 understood simply to ordain that the new text for the short paragraph that precedes ZLDO
6 8.0.70(A) be “pasted over” the existing text for the short paragraph that precedes ZLDO
7 8.0.70(A).

8 Finally, we understand the city to argue that the third amendment simply introduces
9 an additional consideration that was missing in the first two amendments. Eliminating multi-
10 family housing as a permitted use under former ZLDO 2.3.20(I) requires that the uses
11 following multi-family housing (former ZLDO 2.3.20(J) through (W)) be moved up one
12 letter. We understand the city to argue that the third amendment is accomplished when the
13 list of uses set out for ZLDO 2.3.20 in Ordinance 03-2012 (ZLDO 2.3.20(I) through (V)) is
14 “pasted over” the corresponding set of uses as they existed before the amendment (former
15 ZLDO 2.3.20(I) through (W)). With that paste over, former ZLDO 2.3.20(I) is eliminated
16 and replaced by former ZLDO 2.3.20(J), which becomes the current ZLDO 2.3.20(I) and the
17 remaining former uses (ZLDO 2.3.20(K) through (W)) are re-lettered accordingly and
18 become new ZLDO 2.3.20(J) through (V). *Compare* Appendix A and Appendix C. We
19 understand the city to argue that although Ordinance 03-2012 does not explicitly state that
20 the text of ZLDO 2.3.20(I) through (V) is to be pasted over the text of former ZLDO
21 2.3.20(I) through (W), that intent is fairly implied by Ordinance 03-2012.

22 Petitioners suggest a number of other possible interpretations of the third amendment
23 in Ordinance 03-2012. First, petitioner suggests that “[r]ather than remove multi-family uses
24 from the ‘C’ zone, the Ordinance simply set out a partial list of uses (uses I-V) allowed in the
25 ‘C’ zone under [the existing ZLDO].” Petition for Review 4. That suggestion seems highly
26 improbable to us. It would result in two subsections ZLDO 2.3.20(I)—one that authorizes

1 Multi-family housing and one that authorizes a Residential care facility—followed by double
2 listings that vary by one letter for all the remaining uses.

3 In their fourth assignment of error, petitioners suggest the city might have intended to
4 replace former ZLDO 2.3.20(A) through (W) in its entirety with new ZLDO 2.3.20(I)
5 through (V) as set out in Ordinance 03-2012. Under that interpretation, the city would
6 eliminate multi-family housing as well as a number of other uses that were formerly
7 permitted in the C zone. Even if this suggested reading of Ordinance 03-2012 is possible,
8 there is nothing in the legislative history or the title of Ordinance 03-2012 to suggest that the
9 city intended to repeal existing ZLDO 2.3.20(A) through (W) and replace it with the partial
10 list of uses set out in the Ordinance 03-2012 as ZLDO 2.3.20(I) through (V).

11 We conclude that of the textually possible interpretations of Ordinance 03-2012
12 identified by the parties, the city’s “paste over” interpretation is at least as consistent with the
13 text of Ordinance 03-2012 as petitioners’ interpretations. We turn to petitioners’ arguments
14 that the city should not be entitled to rely on the title of Ordinance 03-2012 or legislative
15 history to clarify the city council’s intent in enacting Ordinance 03-2012.

16 **B. The Title of Ordinance 03-2012.**

17 Citing *Rose v. Port of Portland*, 82 Or 541, 162 P 498 (1917), petitioners contend the
18 title is not an “operative part of the ordinance” because it does not follow the “ordaining
19 clause” of the ordinance. We understand petitioner to suggest that because the title of
20 Ordinance 03-2012 does not follow the ordaining clause, it should not even be considered in
21 determining the city’s intent in enacting Ordinance 03-2012.

22 There are several problems with petitioners’ reliance on *Rose*. *Rose* concerned an
23 initiative by the voters of the Port of Portland that resulted in approval of a ballot measure
24 that amended the port’s charter to authorize dredging of the Oregon slough. In assessing a
25 legal challenge to that initiative, the court in *Rose* concluded that the words of the ballot title,
26 which *were not adopted* by the voters, would not control in the event of a conflict with the

1 words of the initiative amendment itself, which *were adopted* by the voters. But the court
2 explained that the title might “throw some light upon the” meaning of ambiguous language in
3 the initiative legislation. *Rose*, 82 Or at 559. Since *Rose* concerned ballot title language that
4 was not adopted as part of the initiative legislation, it is distinguishable in that regard. More
5 to the point, however, the main principle for which petitioners cite *Rose* is to support their
6 suggestion that the Ordinance 03-2012 title should be given no weight in determining the
7 intent of the city in enacting Ordinance 03-2012. For that point, *Rose* lends absolutely no
8 support, since the court held the ballot title in that case might be considered if it shed light on
9 the meaning of ambiguous language in the initiative.

10 In addition, other authority that is more directly on point is contrary to petitioners’
11 suggestion that LUBA should not consider the title of Ordinance 03-2012 in attempting to
12 determine how the city intended to amend the ZLDO when it adopted Ordinance 03-2012.
13 *Goose Hollow Foothills League v. City of Portland*, 66 Or App 920, 925 n5, 676 P2d 897
14 (1984) (while section captions that postdate legislation and are not part of the legislation are
15 of no assistance in interpreting statutes, titles may be because “[t]he title accompanies the bill
16 as it passes through the legislature and may have some value in determining legislative
17 intent”); *State ex rel. Smith v. Smith*, 197 Or 96, 113, 252 P2d 550 (1953) (same). The title
18 of Ordinance 03-2012 is consistent with the city’s suggested interpretation of Ordinance 03-
19 2012 that it was adopted to eliminate multi-family housing as permitted use in the C zone.
20 And the title is inconsistent with petitioners’ suggested interpretations that would result in
21 multi-family housing not being eliminated as a permitted use or result in elimination of a
22 number of other uses as permitted uses in the C zone, along with multi-family housing.

1 **C. Legislative History**

2 Under ORS 174.020 and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009),
3 LUBA is free to consider any legislative history that it considers useful.¹ As we have already
4 explained, the city’s interpretation of the legal effect of Ordinance 03-2012 is consistent with
5 the request in the staff report that was included in the application. *See* Appendix B. And
6 throughout the proceedings below, all debate regarding the third amendments was directed at
7 whether multi-family housing should be eliminated as a permitted use in the C zone. Record
8 24 (opponent expresses opposition to eliminating multi-family housing as a permitted use in
9 the C zone); 16 (March 12, 2012 minutes stating the proposed amendments would “eliminate
10 multi-family housing from Commercial Zone”); 2-4 (April 9, 2012 minutes showing debate
11 of pros and cons of eliminating multi-family housing as a permitted use in the C zone). At
12 no point in the legislative record is there any suggestion that the proposed third amendment
13 would do anything of substance beyond eliminating multi-family housing as a permitted use
14 in the Commercial zone.

15 **D. Heintz**

16 Petitioners’ reliance on *Heintz* is misplaced. The text of Ordinance 03-2012,
17 including its title, along with the legislative history all clearly support the city’s “paste over”

¹ ORS 174.020 provides:

- “(1) (a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.
- (b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.
- “(2) When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.
- “(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.”

1 theory of how Ordinance 03-2012 should be interpreted to simply remove multi-family
2 housing as a permitted use in the city’s C zone. To the extent there is a lack of clarity about
3 that intent in the text of Ordinance 03-2012 that follows the ordaining clause, we simply do
4 not have anywhere near the level of textual uncertainty that the court found to be present in
5 *Heintz*.

6 In *Heintz*, Lane County sought an injunction to prevent a property owner from
7 removing topsoil from the property, and the key issue apparently was whether the property
8 was zoned as the county claimed it was zoned. Although the court’s decision in *Heintz* is not
9 easy to follow in places, from the court’s review of the relevant ordinances, the court in
10 *Heintz* ultimately concluded that it could not conclude with any certainty which of the
11 county’s 10 zoning districts applied to the property. *Heintz*, 228 Or at 162-66. See *Lane*
12 *County v. Bessett*, 46 Or App 319, 329, 612 P2d 297 (1980) (“[t]he ordinance in *Heintz* was
13 found not to [be sufficiently certain] because it did not specify that the property owner’s land
14 was being zoned at all, or what zoning classification was being attached to it”).

15 Nothing approaching the level of uncertainty in *Heintz* is present in this appeal. We
16 are presented with a poorly drafted ordinance that in essence poses a codification issue: How
17 did the city council intend to modify ZLDO 2.3.20 when it adopted Ordinance 03-2012? The
18 “paste over” theory that the city advances in its brief is (1) at least as consistent with the
19 operative text of Ordinance 03-2012 as any interpretation petitioners advance, (2) far more
20 consistent with the stated intent of Ordinance 03-2012, which is part of the text of the
21 ordinance, and (3) far more consistent with the legislative history of Ordinance 03-2012.

22 For the reasons explained above, petitioners’ first and fourth assignments of error are
23 denied.

24 **SECOND ASSIGNMENT OF ERROR**

25 As relevant to petitioners’ second assignment of error, ZLDO 8.0.120 requires that a
26 zoning ordinance amendment must not “conflict with the City of Glendale Comprehensive

1 Land Use Plan,” (GCP) or, if it does, specified considerations must justify a conforming
2 change in the GCP to eliminate any inconsistency.² In their second assignment of error,
3 petitioners argue the city failed to establish that the approved amendment does not conflict
4 with the GCP.

5 **A. Petitioners’ Arguments**

6 **1. The GCP**

7 Petitioners rely in large part on text in the Housing Element of the GCP, which is set
8 out below:

9 “* * * The city’s role is to provide the opportunities for housing development
10 which will meet the needs of the housing market. The city must designate
11 sufficient land to accommodate housing types according to the financial
12 capabilities of the citizens. In Glendale, a need is demonstrated for lower cost
13 housing, such as factory homes or apartments.” GCP 36.

14 Elsewhere in their argument under the second assignment of error petitioners cite other GCP
15 text, also from the Housing Element section of the GCP, that they believe underscores how
16 the above-quoted language at GCP 36 is inconsistent with the challenged decision to
17 eliminate multi-family housing as a permitted use in the C zone:

18 “* * * In 1978 Glendale’s median family income was \$12,747. Since the
19 median family income is the midpoint of all family incomes when arrayed
20 numerically, then \$13,204 is above the income of over 50% of Glendale’s

² ZLDO 8.0.120 provides:

“The following standards and procedures shall be followed in applying for and acting on an amendment to modify or change the zoning text or map:

“A. The change does not conflict with the City of Glendale Comprehensive Land Use Plan.

“B. If the proposed change is not in accord with the City of Glendale Comprehensive Land Use Plan, the Planning Commission and City Council shall seek to determine that alteration of the Plan can be justified on the basis that there has been substantial change in the character of the area since the Plan’s adoption, thus warranting a change in the plan, that there is demonstrated public need, that the Plan was adopted in error, or that the controlling state law has changed.”

1 families, placing these families in HUD’s low income classification. * * *.”
2 GCP 30.

3 “[S]ingle family homes [are] beyond the economic means of most Glendale
4 families with the cost of housing growing at a greater rate than their incomes.”
5 GCP 31.

6 From the above, it appears the GCP recognizes that a significant segment of the city’s
7 population needs multi-family housing and that the city has attempted in the GCP to
8 “designate sufficient land to accommodate * * * apartments.” We understand petitioners to
9 argue that by eliminating multi-family housing as a permitted use in the C zone, the only
10 remaining zone that allows multi-family housing is the city’s Residential zone. The
11 Residential zone does not allow multi-family housing as a *permitted* use, only as a
12 *conditional* use, which means multi-family housing in the Residential zone will be subject to
13 a review that it is not currently subject to in the C zone.³ Petitioners contend that because
14 Ordinance 3-2012 eliminates the C zone as a possible location for multi-family housing it
15 “conflicts” with the GCP.

16 2. The City’s Findings

17 Alternatively, petitioners contend that under ZLDO 8.0.100(C) and 8.0.110(A) the
18 city was obligated to adopt findings to explain why its decision does not conflict with the
19 GCP.⁴ The city adopted the following finding:

³ Petitioners do not argue that the amendments adopted by Ordinance 03-2012 are inconsistent with the statutory limits on local regulation of “needed housing,” as defined by ORS 197.303; Goal 10 (Housing), or OAR chapter 660, division 8.

⁴ ZLDO 8.0.100(C) provides as follows:

“A copy of the adopted text of any new amendment to the Comprehensive Plan or land use regulation, *together with the findings adopted by the City of Glendale* shall be submitted to the Department of Land Conservation and Development not later than five working days after the final decision by the City. If the proposed amendment has been substantially amended from that initially sent to the Department of Land Conservation and Development under Section 8.0.100(A), the City shall specify the changes that have been made (ORS 197).” (Emphasis added.)

ZLDO 8.0.110(A) provides as follows:

1 “The amendment will not conflict with the [GCP] because there is nothing in
2 the plan policies that suggest that multi-family housing is to be located in the
3 C Zone.” Record 54.

4 Petitioners point out that nothing in the cited plan language specifies where the needed multi-
5 family housing is to be provided, only that such housing is needed. Petitioners contend the
6 above finding is therefore inadequate.

7 **B. The City’s Response**

8 **1. The City’s Findings**

9 Turning first to petitioners’ findings challenge, we agree with the city that as a
10 general matter legislative land use decisions, unlike quasi-judicial land use decisions, need
11 not be supported by findings. *Home Depot, Inc. v. City of Portland*, 37 Or LUBA 870, 875,
12 *aff’d* 169 Or App 599, 10 P3d 316 (2000); *Churchill v. Tillamook County*, 29 Or LUBA 68,
13 77 (1995); *Redland/Viola/Fischer’s Mill CPO v. Clackamas County*, 27 Or LUBA 560, 563
14 (1994). Petitioners’ findings challenge relies on ZLDO 8.0.100(C) and 8.0.110(A), which
15 petitioners contend are local laws that require that the city’s legislative decision be supported
16 by findings. *See* n 4. If ZLDO 8.0100(C) and 8.0110(A) require that the city’s legislative
17 decisions be supported by findings, and the city failed to adopt findings or adopted only
18 impermissibly conclusory and inadequate findings, remand would be required. *Zimmerman*
19 *v. Columbia County*, 40 Or LUBA 483, 491 (2001); *Barnard Perkins Corp. v. City of*
20 *Rivergrove*, 34 Or LUBA 660, 675 (1998); *Foster v. Coos County*, 28 Or LUBA 609, 612
21 (1995).

22 We agree with the city that neither ZLDO 8.0.100(C) nor 8.0.110(A) require that the
23 city adopt findings in support of its legislative decisions. ZLDO 8.0.110(A) simply requires
24 a report that might or might not include findings. ZLDO 8.0.100(C) simply requires that the

“The Planning Commission shall conduct a public hearing on the proposed amendment and
provide a report and recommendation to the City Council regarding consistency of the
proposed amendment with Section 8.0.120, Standards for Amending Zoning Text or Map.”

1 city provide any findings that the city may adopt to the Department of Land Conservation
2 and Development; it does not independently require that the city adopt findings. *See* n 4.
3 But as is almost always the case, despite the lack of any generally applicable state or local
4 requirement that legislative land use decisions be supported by findings or any specific or
5 local law specifically imposing a findings requirement, findings are necessary in this case to
6 determine if the challenged decision is consistent with applicable standards—here the ZLDO
7 8.0.120(A) requirement that the ZLDO amendment must “not conflict with the [GCP].” *See*
8 *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16, n 6, 38 P3d 956 (2002)
9 (“there must be enough in the way of findings or accessible material in the record of the
10 legislative act to show that applicable criteria were applied and that required considerations
11 were indeed considered”).

12 The city’s finding in this matter—that the GCP does not require that multi-family
13 housing be located in the C zone—is not sufficient in and of itself to explain why such is the
14 case. However, as we explain below, in its brief, the city identifies a particularly relevant
15 Housing Policy that is consistent with that finding. The city also explains that the GCP at no
16 point calls for multi-family housing to be located in the C zone and is structured in a way to
17 give particular force to the Policy that such housing will be accommodated in the city’s
18 Residential zone.

19 Petitioners’ findings challenge provides no basis for remand.

20 **2. The GCP**

21 **a. The Elements Sections of the GCP are not Mandatory**

22 The city first responds that petitioners erroneously rely on the Elements section of the
23 GCP, rather than the Goals and Policies. The city contends the latter are the mandatory or
24 regulatory parts of the GCP, whereas the Elements sections of the GCP are simply the city’s
25 attempt to identify “issues and problems” which form the basis for the Goals and Policies.

1 The city cites the following language from the Introduction to the GCP to support its view of
2 the GCP:

3 “The ELEMENTS, GOALS and Policies, and MAPS comprise the
4 components of the [GCP]. The purpose of this plan is to guide the process of
5 urban land development in a fair and orderly manner during the next twenty
6 years. The [GCP] is a complete statement of the city land use policy based
7 upon an inventory of issues and problems which are documented in the
8 ELEMENTS.

9 “The GOALS and Policies are the laws which govern the actions of citizens,
10 developers and other governments in land use conservation and development
11 in the city of Glendale. Goals are Oregon statewide planning rules. Policies
12 interpret the goals at the local level. * * *

13 “MAPS depict the intent of the policies. * * *

14 “Together, the ELEMENTS, GOALS, and Policies and MAPS form the
15 [GCP]. The ELEMENTS identify the issues and problems; the GOALS and
16 Policies are statements of action which address the issues and problems; and
17 the MAPS depict the information found in the ELEMENTS and also the intent
18 of the policy statements found under the GOALS. * * * The [GCP] is
19 implemented through the Zoning and Subdivision Ordinances of the city.”
20 GCP 1.

21 Based on the above, we understand the city to argue that for purposes of applying the
22 ZLDO 8.0.120(A) requirement that a ZLDO amendment must not “conflict with the [GCP]”
23 the relevant inquiry is what do the GCP Goals and Policies require, because it is those GCP
24 Goals and Policies that a ZLDO amendment must not conflict with, not the language in the
25 GCP Elements section that may have been the basis for those GCP Goals and Policies. The
26 city contends that Ordinance 03-2012 is entirely consistent with Housing Policy 1, which is
27 the only policy that identifies where the city anticipates multi-family development.

28 **b. GCP Housing Policy 1 is to Locate Multi-Family Housing**
29 **in the City’s Residential Zone, not its Commercial Zone**

30 Before considering Housing Policy 1, we briefly review the language in the Elements
31 sections of the GCP that appear to have some bearing on multi-family housing.

1 The GCP Housing Element appears at GCP 28-37. That housing element discusses
2 the existing and needed multi-family housing and appears to anticipate that the need for
3 multi-family housing will be accommodated on residentially zoned lands. There is nothing
4 in the Housing Element that even remotely suggests that the GCP anticipates that the
5 identified need for multi-family housing will be met, in whole or in part, by allowing multi-
6 family development in the city’s C zone.

7 The section of the GCP entitled “Glendale Future Land Use Needs and Urban Growth
8 Boundary” also appears to be part of the Elements section of the GCP. That section
9 discusses both residential land needs and commercial land needs. The section addressing
10 residential land needs discusses meeting housing needs, including multi-family housing
11 needs on “residential land.” GCP 50-51. The section discussing Commercial land needs
12 discusses existing “commercial uses” and the need for additional “commercial zoning.”
13 Neither the Residential nor the Commercial sections of the GCP entitled “Glendale Future
14 Land Use Needs and Urban Growth Boundary” say anything about allowing housing of any
15 type within commercially zoned land. GCP 52.

16 Finally, we turn to the “Goals and Policies” section of the GCP. The only Goal or
17 Policy that we can find that has any bearing on where multi-family housing is to be located is
18 GCP Housing Policy 1, which is set out below:

19 “1. The City shall accommodate the needs of lower income families by
20 continuing to incorporate mobile home parks and multi-family
21 developments *into the residential zone.*” GCP 63.

22 GCP Housing Policy 1 is to accommodate the need for multi-family development in the
23 Residential zone. Neither GCP Housing Policy 1 nor any of the other GCP Housing Policies
24 suggest the city plans to accommodate any of its need for multi-family dwellings in the C
25 zone. GCP 63. GCP Housing Policy 1 is consistent with the Elements sections of the GCP
26 which also seem to anticipate locating multi-family development in the city’s Residential
27 zone.

1 Petitioners have not established that Ordinance 03-2012 is inconsistent with the GCP.

2 The second assignment of error is denied.

3 **THIRD ASSIGNMENT OF ERROR**

4 Petitioners' third assignment of error relies on their second assignment of error.
5 Under ZLDO 8.0.120(B), "[i]f the proposed [ZLDO] change is not in accord with the City of
6 Glendale Comprehensive Land Use Plan, the Planning Commission and City Council shall
7 seek to determine that alteration of the Plan can be justified on the basis that there has been
8 *substantial change in the character of the area since the Plan's adoption*, thus warranting a
9 change in the plan, that there is *demonstrated public need*, that the Plan was *adopted in error*,
10 or that the *controlling state law has changed*."⁵ Petitioners argue in their third assignment of
11 error that the city failed to find that there has been a "substantial change in the character of
12 the area," "that there is a demonstrated public need," "that the Plan was adopted in error" "or
13 that the controlling state law has changed," and petitioners contend that the evidentiary
14 record would not support such findings.

15 Petitioners' third assignment of error is based on the faulty premise that the ZLDO
16 amendment is inconsistent with the GCP. Because we reject petitioners' second assignment
17 of error, petitioners have not established that ZLDO 8.0.120(B) applies. ZLDO 8.0.120(A),
18 applies in place of ZLDO 8.0.120(B) in cases where the ZLDO amendment is consistent with
19 the GCP. ZLDO 8.0.120(A), which applies in this case, does not require the findings that
20 petitioners argue are missing and lacking support in the evidentiary record.

21 The third assignment of error is denied.

22 The city's decision is affirmed.

⁵ See n 2.

1 **Appendix A**
2 **[Page 22 of City of Glendale Zoning and Land Development Ordinance]**
3 **[Petition for Review Appendix 11-12]**

4 **“Commercial – C Zone**

5 **“2.3.10 Purpose**

6 **“* * * * ***

7 **“2.3.20 Permitted Uses.**

8 “In a C zone the following uses and their accessory uses are permitted when
9 developed under the applicable development standards in this ordinance:

- 10
11 “A. Retail trade establishment such as food store, drug store, gift shop, hardware
12 store and furniture store.
13 “B. Repair and maintenance service of the type of goods to be found in the above
14 permitted retail trade establishments, provided such service is performed
15 wholly within an enclosed building.
16 “C. Business, governmental, and professional office.
17 “D. Financial institution.
18 “E. Eating and drinking establishment.
19 “F. Personal services such as barber shop, tailoring, beauty shop, laundry and dry
20 cleaning establishments.
21 “G. Home or business services such as printing, copy machine, computer,
22 upholstery and carpet cleaning establishments.
23 “H. Motel or hotel.
24 “I. ~~Multi-family housing subject to Section 4.0.150, not including accessory use~~
25 ~~apartment located above or connected to a commercial building. OR 03-2012~~
26 “J. Residential care facility.
27 “K. Clinic.
28 “L. Public or private school.
29 “M. Church.
30 “N. Community meeting facility.
31 “O. Hospital.
32 “P. Fire station.
33 “Q. Library.
34 “R. Park, golf course, publicly owned recreation area.
35 “S. Museum.
36 “T. Residential care home in a preexisting dwelling.
37 “U. Radio or television broadcasting studio.
38 “V. Bed and breakfast establishment in conjunction with a preexisting residential
39 use.
40 “W. “Child day care facility for 12 or fewer children in a preexisting dwelling.
41

1 **Appendix B**
2 **[March 12, 2012 Staff Report]**
3 **[Petition for Review Appendix 3-4; Record 67-68]**

4 “* * * * *

Within this report, words quoted from the Glendale Zoning and Land Development Ordinance (ZLDO) are provided in *italics*. Information that has been prepared or paraphrased by the planner preparing this staff report is provided in regular font (not italicized).

- “• Language proposed for removal is shown with ~~strikethrough~~.
- “• Language proposed for addition is shown in **boldface**.

5 “* * * * *

6 **“Amendment 3:**

7 “Zoning Text Amendment 3 will modify the Commercial – C Zone as
8 follows:

9 **“2.3.20 Permitted Uses.**

- 10
11 ~~“I. *Multi-family housing subject to Section 4.0.150, not including*~~
12 ~~*accessory use apartment located above or connected to a commercial*~~
13 ~~*building.*~~
14 ~~“J. **I.** *Residential care facility.*~~
15 ~~“K. **J.** *Clinic.*~~
16 ~~“L. **K.** *Public or private school.*~~
17 ~~“M. **L.** *Church.*~~
18 ~~“N. **M.** *Community meeting facility.*~~
19 ~~“O. **N.** *Hospital.*~~
20 ~~“P. **O.** *Fire station.*~~
21 ~~“Q. **P.** *Library.*~~
22 ~~“R. **Q.** *Park, golf course, publicly owned recreation area.*~~
23 ~~“S. **R.** *Museum.*~~
24 ~~“T. **S.** *Residential care home in a preexisting dwelling.*~~
25 ~~“U. **T.** *Radio or television broadcasting studio.*~~
26 ~~“V. **U.** *Bed and breakfast establishment in conjunction with a preexisting*
27 ~~*residential use.*~~
28 ~~“W. **V.** *Child day care facility for 12 or fewer children in a preexisting*
29 ~~*dwelling.”*~~~~~~

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Appendix C
[Ordinance 03-2012]
[Petition for Review Appendix 1; Record 10]

“CITY OF GLENDALE
“ORDINANC 03-2012

“AMENDING ORDINANCE 01-2005 TO COMPLY WITH CHANGES IN OREGON
LAW, TO CORRECT AN EXISTING TEXT ERROR, AND TO REMOVE MULTI-
FAMILY HOUSING FROM THE PERMITTED USES IN
COMMERCIAL ‘C’ ZONE.

12 “The City of Glendale ordains as follows:

13
14 **“Ordinance 01-2005**

15 **“Section 8.0.100 Notice Procedures for Legislative Hearings.**

16 ****

17 **“Section 8.0.70 Notice Procedures for Quasi-Judicial Hearings.**

18 ****

19 **“Commercial – C Zone.**

20 **“Section 2.3.20 Permitted Uses**

- 21 “I. Residential care facility
- 22 “J. Clinic
- 23 “K. Public or private school
- 24 “L. Church
- 25 “M. Community meeting facility
- 26 “N. Hospital
- 27 “O. Fire station
- 28 “P. Library
- 29 “Q. Park, golf course, publicly owned recreation area
- 30 “R. Museum
- 31 “S. Residential care home in a preexisting dwelling
- 32 “T. Radio or television broadcasting studio
- 33 “U. Bed and breakfast establishment in conjunction with a preexisting residential
- 34 use.
- 35 “V. Child day care facility for 12 or fewer children in a preexisting dwelling”